



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 21 2007

Carl McGuire, Treasurer
Boswell for Congress
PO Box 6220
Des Moines, IA 50309

RE: MUR 5835

Dear Mr. McGuire:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Boswell for Congress ("the Committee") and you, in your official capacity as treasurer, may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). Upon further review of the allegations contained in the complaint, the Commission, on December 17, 2007, voted to dismiss the allegations as they pertain to the Committee and you, as treasurer. The Factual and Legal Analysis, which more fully explains the Commission's decision, is enclosed for your information.

Furthermore, the Commission admonishes Boswell for Congress and you, as treasurer, for violating 2 U.S.C. § 441d. You should take steps to ensure that this activity does not occur in the future.

You are advised that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) remain in effect, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

If you have any questions, please contact Kate Belinski, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

A handwritten signature in black ink that reads "Thomas J. Andersen".

Thomas J. Andersen
Acting Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Boswell for Congress and Carl McGuire, MUR 5835
in his official capacity as treasurer

I. INTRODUCTION

This matter was generated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The activity at issue consists of alleged telephone "push polls" conducted by Quest Global Research Group, Inc. ("Quest") of voters in Iowa's 3rd Congressional District in August and October, 2004. The polls were apparently directed against Stan Thompson, a candidate in the 3rd District Congressional race, but the pollsters did not identify the entity that paid for the polls and did not state whether any candidate authorized the polls. The Commission previously found reason to believe that an unknown respondent, also known as the unidentified client of Quest Global Research, Inc., violated the Act.

II. FACTUAL AND LEGAL ANALYSIS

Information in the Commission's possession indicates that Boswell for Congress paid a total of \$5,500 to a vendor, Anzalone Liszt Research, Inc., for the polls and reported the disbursement as an operating expense. Anzalone subcontracted the August poll to Quest. Quest billed Anzalone and Anzalone then billed Boswell for 500 completed poll calls of voters in Iowa's 3rd District between August 22 and 25, 2004. For this poll, Boswell paid \$3,500. The script for the August poll included basic demographic questions (regarding gender, age, income, etc.), questions about the likelihood that the voter would vote for a Democratic or a Republican candidate, and the voter's impression of candidates George W. Bush, John Kerry, Leonard

1 Boswell, and Stan Thompson. The pollsters then read a series of statements about Stan
2 Thompson, and asked the voter whether the statements made them much less likely, somewhat
3 less likely, or made no difference in the way they would vote.¹ The poll did not contain a
4 disclaimer disclosing who paid for the call, and did not state whether it was authorized by a
5 candidate.

6 The October poll was also conducted by Quest. It comprised at least 600 telephone calls
7 and took place between October 21 and 25, 2004. Quest billed Anzalone for 600 calls, but
8 Quest's chart of telephone call results indicates that it completed 800 calls in connection with the
9 poll. Boswell paid Anzalone \$2,000 for this poll. Like the preceding polls, this poll sought
10 general demographic information, the likelihood the voter would choose a major party candidate,
11 and impressions of the Presidential and Congressional candidates. This time, the poll sought
12 voter reaction to only one statement:

13 Stan Thompson opposes additional spending in Afganistan [sic] that will
14 help in the hunt and capture of Osama Bin Laden and the fight against
15 terrorism.
16

17 The poll did not contain a disclaimer disclosing who paid for the call, and did not state whether it
18 was authorized by a candidate.

¹ For example, statements from the August poll included:

"Stan Thompson makes his living defending big insurance companies in court against people who have been severely injured in accidents or medical mistakes. Thompson says he wants to represent the average person in Congress, but he has a track record [sic] protecting insurance company profits over consumers."

"Stan Thompson is anti-choice and opposes a woman's right to have an abortion."

"Stan Thompson has said he opposes regulating the tobacco industry and has taken thousands of dollars in campaign contributions from tobacco companies like Philip Morris and RJR."

"Stan Thompson works for companies that outsource American jobs overseas."

"Stan Thompson supported a two trillion dollar tax cut for wealthy Americans and big corporations at the expense of middle class working families. Nearly 90% of Iowan families got less than \$100 in tax cuts while the very wealthy got a \$78,000 tax cut."

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1 The Act requires that political committees “making a disbursement for the purpose of
2 financing any communication ... through any other type of general public political advertising”
3 must place a disclaimer in the communication. 2 U.S.C. § 441d. Furthermore, the regulations
4 state that any “public communication” for which a political committee makes a disbursement
5 must contain a disclaimer. 11 C.F.R. § 110.11. A public communication includes a
6 communication by telephone bank to the general public. 11 C.F.R. § 100.26. A telephone bank
7 means that more than 500 calls of an identical or substantially similar nature were made within a
8 30-day period. 11 C.F.R. § 100.28. The Explanation and Justification discussing the disclaimer
9 regulations implementing the 2002 Bipartisan Campaign Reform Act (“BCRA”) amendments to
10 the Act also make clear that a telephone bank is considered a type of general public political
11 advertising. *See* 67 Fed. Reg. 76962, 76963 (Dec. 13, 2002) (“each form of communication
12 specifically listed in the definition of ‘public communication,’ as well as each form of
13 communication listed with reference to a ‘communication’ in 2 U.S.C. 441d(a), must be a form
14 of ‘general public political advertising.’”). Therefore, any candidate, political committee or their
15 agent(s) making any disbursement for telephone bank calls must include a disclaimer on the
16 calls.

17 The disclaimer must be presented in a “clear and conspicuous manner” in order to give
18 the listener “adequate notice of the identity of the person or political committee that paid for and,
19 where required, that authorized the communication.” 11 C.F.R. § 110.11(c)(1). A disclaimer, if
20 paid for and authorized by a candidate or an authorized committee of a candidate, must clearly
21 state that the communication has been paid for by the authorized political committee. 11 C.F.R.
22 § 110.11(b)(1).

23 The polls were paid for by Boswell. Information and documents obtained to date indicate
24 that the August poll comprised exactly 500 completed telephone calls. Because a telephone bank

1 is defined as "more than 500" calls, the August poll does not appear to constitute a public
2 communication requiring a disclaimer. However, the October poll at issue here involved more
3 than 500 substantially similar telephone calls. Thus, October poll required a disclaimer stating
4 that it was paid for by Boswell for Congress and that it was authorized by Leonard Boswell.
5 Therefore, the Commission is substituting the name of Boswell for Congress and Carl McGuire,
6 in his official capacity as treasurer, in place of "unknown respondent, also known as the
7 Unidentified Client of Quest Global Research, Inc." in the Commission's previous finding that
8 there is reason to believe an unknown respondent violated 2 U.S.C. § 441d. Furthermore, the
9 Commission admonishes Boswell for Congress and Carl McGuire, in his official capacity as
10 treasurer, for violating 2 U.S.C. § 441d, and given the relatively low amount in violation, as a
11 matter of prosecutorial discretion, is taking no further action and closing the file with respect to
12 this respondent.

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